

HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MACKAY COMMUNICATIONS,
INC.,

Plaintiff,

v.

MISS LEONA, INC., *in personam*, and
F/V MISS LEONA, Official No.
522643, her engines, tackle,
equipment, appurtenances, etc., *in rem*,

Defendants.

IN ADMIRALTY

NO. 20-587 BJR

**STIPULATED MOTION AND
ORDER TO EXTEND DISCOVERY
CUT OFF DATE**

Plaintiff Mackay Communications, Inc. and Defendant Miss Leona, Inc. respectfully submit pursuant to Fed.R.Civ.P. 16(b)(4) and LCR 7(d)(1), 10(g), and 16(b)(5), their Joint Stipulated Motion to Extend the Discovery Cut Off Date to January 22, 2021.

The case involves Plaintiff's claim relating to non-payment of a bill for repair of a fishing vessel and Defendant's counterclaim for costs incurred due to problems with Plaintiff's repairs.

The parties filed their Joint Status Report on 8/10/20 requesting a discovery cut-off date of January 22, 2021, and a trial date of May 24, 2021 (dkt 11). The parties stated

1 therein that they “may request an extension [of this date] due to unforeseen future delays due
2 to the coronavirus.” Id.

3 The Court issued an Order Setting Trial and Related Dates on 10/6/21, setting a trial
4 date of 5/24/21, but an earlier discovery cut off of 11/25/20 (dkt 12).

5 The parties have tried, but are unable to meet the discovery cut-off date due to the
6 unexpected lack of availability of key witnesses and due to delays in scheduling important
7 depositions due to Covid.

8 A primary witness in the case is Chris Allinson, who is the Captain of the F/V MISS
9 LEONA. Allinson has the most knowledge about key issues in the case, including the
10 damage to the boat, hiring Mackay, what defendant contends was the parties’ agreement,
11 alleged delays in completion due to work on the boat, alleged inadequacies in the repairs
12 performed by Mackay, and what additional work was performed by a new contractor and
13 which of this work relates to work that Mackay performed. Allinson has been fishing on the
14 boat in Alaska since the summer and only returned to Washington last week. It was not
15 expected when the parties filed their Joint Status Report that Allinson would be away fishing
16 until November. His deposition is scheduled for Monday, November 23. However, based
17 on his testimony, additional depositions of other witnesses may need to be scheduled.
18

19 Defendant will rely on surveyor Stuart McFarland, who resides in Kodiak, Alaska,
20 and Dave Pratt of Fusion Marine. McFarland coordinated the repairs on behalf of
21 Defendant’s insurer and will offer testimony related to alleged delay and problems with
22 Plaintiff’s repairs. Requests to depose these witnesses were made in October after
23 Defendant served its discovery responses producing records and statements from them.
24 Efforts to schedule their depositions has taken much longer than expected because of their
25 limited availability due to Covid. McFarland is only first available to be deposed on

1 December 1, 2020. Pratt's work schedule has not yet allowed scheduling his deposition, and
2 the earliest date he will be available appears to be sometime in December.

3 Defendant requested to depose Brynn Decker, the manager of Mackay's office in
4 Dutch Harbor who was involved with scheduling the vessel repairs, but she was not
5 available and her deposition could not be scheduled until November 24, 2020.

6 The parties will not be able to obtain expert opinions in the case until depositions of
7 these primary factual witnesses are completed. Upon completion of these depositions,
8 additional depositions of fact witnesses may be necessary. For instance, Defendant has
9 indicated it may need to depose the electrician and electronics technician who performed
10 work on the M/V MISS LEONA to the extent the scheduled witnesses do not have the
11 requisite knowledge. Plaintiff may need to depose similar workers from the subsequent
12 repairer who replaced Mackay.

13 The parties have prosecuted the case in good faith. The parties exchanged Initial
14 Disclosures in early August in accordance with the case schedule. The parties were unable
15 to propound discovery until around this time pursuant to the Civil Rules. Plaintiff issued
16 discovery in August after receiving Defendant's Initial Disclosures. Delays brought about
17 due to Covid restrictions and the difficulty in obtaining responsive information and
18 documents because the boat was still fishing in Alaskan waters, Defendant was unable to
19 serve discovery responses until October 9, 2020. Plaintiff was unaware of certain witnesses
20 (e.g. McFarland) until disclosed in these discovery responses, and soon afterward requested
21 to schedule their depositions. As discussed above, these depositions could not be scheduled
22 until the next week and some of the witnesses are not available until December.

23 The Court may extend the case scheduling dates for "good cause." LCR 16(b)(5).
24
25 Good cause for purposes of Rule 16 looks at the diligence of the parties in complying with

1 the case scheduling order. Johnson v. Mammoth Recreation, Inc., 975 F.2d 604, 607-08 (9th
2 Cir. 1992). Good cause exists is “noncompliance with a Rule 16 deadline occurred or will
3 occur, notwithstanding diligent efforts to comply, because of the development of matters
4 which could not have been reasonably foreseen or anticipated at the time of the Rule 16
5 scheduling conference.” Jackson v. Laureate, Inc., 186 F.R.D. 605, 607 (E.D. Cal. 1999).

6 The parties submit that good cause exists to extend the trial and associated case
7 dates. The case schedule issued on October 6th, affording only seven weeks to complete
8 discovery. The parties had exchanged Initial Disclosures and propounded discovery
9 requests, but Defendant’s responses were only received subsequently. Scheduling of
10 depositions has been delayed for reasons both unexpected and out of the control of the
11 parties. The M/V MISS LEONA remained fishing in Alaskan waters until November, which
12 was unexpected. That made key witnesses unavailable until late November and December.
13 Other key witnesses in the case who must be deposed are employees of the parties who
14 reside outside Seattle (e.g. Dutch Harbor) or contractors (e.g. Dutch Harbor, Kodiak), the
15 scheduling of whose depositions has been delayed due to Covid issues, despite the diligence
16 of counsel, who are both members of small firms working out of their homes.

17
18 Accordingly, the parties respectfully request that the Court modify the case schedule
19 to extend the discovery cut off date until January 22, 2021.

20 The parties are not requesting the Court to change the trial date, but if the Court believes
21 that these changes require a new trial date, the parties request a date in either June or July 2021.
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1 DATED this 17th day of November, 2020.

2 GASPICH LAW OFFICE PLLC

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4 s/Anthony J. Gaspich

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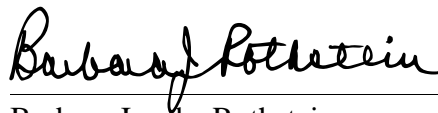
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13 **ORDER**

14 The parties having so stipulated, and the Court finding good cause for entry hereof,

15 NOW, THEREFORE, IT IS HEREBY ORDERED that the discovery cut off date is
16 extended until January 22, 2021, all other dates in the Order Setting Trial and Related Dates
17 (dkt 12) remaining the same.

18 Dated this 23rd day of November, 2020.

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20 

21 Barbara Jacobs Rothstein

22 U.S. District Court Judge

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2 Presented by:

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9 Approved as to form;

10 Notice of presentation waived

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